Supreme Court, U.S.
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No. 85-1511

IN THE

Supreme Court of the United States

OCTOBER TERM 1985

JOHN A. BETTS,

Petitioner

v.

ATTORNEY REGISTRATION
AND DISCIPLINARY COMMISSION
OF THE SUPREME COURT OF ILLINOIS,

Respondent

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

For the sake of brevity, Respondent will not provide sections in its brief for opinion below, jurisdiction and statute involved. Respondent will address in its argument those portions of those sections of Petitioner's brief which Respondent considers inaccurate or inadequate.

QUESTIONS PRESENTED

I. WHETHER PETITIONER HAS FAILED TO INVOKE FEDERAL JURISDICTION PURSUANT TO 28 U.S.C. SEC.1257 (3)?

II. WHETHER GROUNDS FOR DISCIPLINE EXIST?

III. WHETHER PETITIONER HAS BEEN PREJUDICED BY A LAPSE OF TIME?

IV. WHETHER PETITIONER ENGAGED IN CONDUCT THAT WARRANTS DISCIPLINE?

V. WHETHER PETITIONER WAS PREJUDICED BY AN EX POST FACTO LAW?

VI. WHETHER PETITIONER VIOLATED ILLINOIS PROFESSIONAL ETHICS STANDARDS?

STATEMENT OF THE CASE

For the sake of brevity, Respondent will not recount all of the underlying facts. On October 3, 1985 the Supreme Court of Illinois ordered that Petitioner be suspended from the practice of law for six months. This discipline was ordered since Petitioner had intentionally lied to a Circuit Court in a petition to declare an elderly man an incompetent, which resulted in a deprivation of the man's liberty.

A complete statement of the facts

material to the consideration of the questions presented is contained in the opinion of the Supreme Court of Illinois and is reproduced in Petitioner's brief (Petition p.p. 64-103). However, Respondent will address a glaring inaccuracy set forth in Petitioner's statement of the case and repeated throughout his argument.

Petitioner asserts that "this case overlapped a change in the standards for discipline in Illinois [since] Illinois had not adopted the Code of Professional Responsibility as a standard for discipline, when the case was initiated" (Petition p.p. 6-7). Petitioner's assertion is not correct.

The Supreme Court of Illinois adopted the Illinois Code of Professional

Responsibility (hereafter "the 1980 Code") on June 3, 1980, after this case was initiated. This did not change the standards for discipline in Illinois.

Prior to June 3, 1980 the Illinois State and Chicago Bar Associations' Illinois Code of Professional Responsibility (hereafter "the 1970 Code") was used by the Illinois Supreme Court as a standard for attorney discipline.

> The [1970 Code] is not binding on the [Illinois Supreme] Court. However, such Canons of ethics have been found to constitute a safe guide for professional conduct and an attorney may be disciplined for not observing them. In re Taylor, 66 Ill. 2d 567, 571, 363 N.E. 2d 845, 847 (1977). See also: In re Broverman, 40 Ill. 2d 302, 239 N.E. 2d 816 (1968); In re Krasner, 32 Ill. 2d 121, 204 N.E. 2d 10 (1965); In re Heirich, 10 Ill. 2d 357, 140 N.E. 2d 825 (1956), cert.

denied 355 U.S. 805 (1957); In re Mitgang, 385 Ill. 311, 52 N.E. 2d 807 (1944).

Petitioner was charged with violating the 1970 Code. The complaint charging Petitioner with violations of the 1970 Code is reproduced in the Appendix (A-1 to A-14). Throughout his Petition, Petitioner incorrectly asserts that he was charged with and is being disciplined for violating the 1980 Code.

SUMMARY OF ARGUMENT

Petitioner has failed to demonstrate that this Court has jurisdiction to review the final disciplinary judgment of the Supreme Court of Illinois. Petitioner has failed to raise any

substantial federal constitutional question which makes review by this Court necessary or appropriate. The only issues raised by this petition are issues of fact and state law.

ARGUMENT

I.

PETITIONER HAS FAILED TO INVOKE FEDERAL JURISDICTION PURSUANT TO 28 U.S.C SEC. 1257 (3).

Petitioner is required to demonstrate that this Court has jurisdiction to review the judgment of the Supreme Court of Illinois. Petitioner has failed to do so.

United States Supreme Court Rule 21.1(h) requires Petitioner to specify in his statement of the case:

> The stage in the proceedings below at which the federal questions sought to be reviewed were raised, the method or manner of raising them and the way in which they were passed upon by the Court....as will show that the federal question was timely and properly raised so as to give this Court jurisdiction to review the judgment on writ of certiorari.

Petitioner did not follow Rule 21.1(h) and consequently has failed to demonstrate that this Court has jurisdiction to review the judgment on writ of certiorari.

II.

GROUNDS FOR DISCIPLINE DO EXIST.

Petitioner asserts that "grounds for discipline do not exist" (Petition p.p.

13-20). Petitioner's basis for this assertion is his mistaken belief that discipline is being sought for a violation of the 1980 Code. As set forh above, discipline is being sought for violations of the 1970 Code.

Petitioner also asserts that he can not be disciplined since the Supreme Court of Illinois did not specifically state in its opinion that his conduct "tended to defeat the administration of justice" (Petition p.p. 13-20). Respondent's assertion lacks merit and is contrary to Illinois law.

Petitioner is requesting this Court to review a decision of the Supreme Court of Illinois involving state law. The judgment of the Supreme Court of Illinois to impose discipline upon a lawyer whom

it licensed is a matter within its authority. Goldfarb v. Virginia State Bar, 421 U.S. 773, 792 (1975). The Supreme Court of Illinois has inherent authority to regulate the practice of law in Illinois. In re Teitelbaum, 13 Ill. 2d 586, 150 N.E. 2d 873 (1958), cert. denied, 358 U. S. 881, rehearing denied, 358 U. S. 923 (1958).

Discipline has been imposed on several occasions in Illinois, prior to and after the adoption of the 1980 Code, without a specific statement in the Supreme Court of Illinois' opinion that the attorney engaged in conduct that tends to defeat the administration of justice. In re Frey, 65 Ill. 2d 130, 357 N. E. 2d 511 (1976); In re Levinson, 71 Ill. 2d 486, 376 N. E. 2d 998 (1978); In

re Smith, 75 Ill. 2d 134, 387, N. E. 2d 316 (1978), cert. denied 444 U. S. 841 (1979); In re Johnson, 93 Ill. 2d 441, 444 N. E. 2d 153 (1982); In re Hall, 95 Ill. 2d 371, 447 N. E. 2d 805 (1983).

Petitioner engaged in conduct that tends to defeat the administration of justice. He made false and misleading statements to a Court in his verified petition to declare an elderly man incompetent. The false statements led to a deprivation of the man's liberty.

III.

PETITIONER HAS NOT BEEN PREJUDICED BY A LAPSE OF TIME.

Petitioner argues that he was prejudiced since he was not notified for approximately two years that a decision to file charges against him was rendered

against him by an Inquiry Board panel. The Petitioner's argument lacks merit.

The disciplinary procedures in Illinois require the Illinois Attorney Registration and Disciplinary Commission (hereafter the "Commission") to notify an attorney under investigation that he may appear before an Inquiry Board panel, before that panel determines if formal charges are warranted. The pertinent Supreme Court of Illinois and Commission rules are reproduced in the Appendix (A-15 to A-18).

Petitioner was given such notice and he appeared before an Inquiry Board panel before the panel determined that formal charges should be filed. He was notified approximately two years later that formal charges would be filed.

The rules of the Supreme Court of Illinois and of the Commission do not require notice to the Petitioner after the Inquiry Board panel determines that formal charges should be filed.

The Commission, however, had a policy of sending a letter to the attorney that formal charges would be filed. This letter was not required by Commission rules, and was merely sent as a courtesy. In any event:

> The Supreme Court of Illinois has inherent power to regulate the admission of attorneys to the practice of law and to discipline attorneys who have been admitted to practice before it. The disciplining of attorneys is in the nature of an original proceeding in which the Commission and its various officers, as well as the Inquiry Board, the hearing panel and the Review Board serve only as agents of the [Supreme] Court [of Illinois] in administering the

> disciplinary functions that have been delegated to them." In re Jason Mitan, 75 Ill. 2d 118, 378 N.E. 2d 278 (1979), cert. denied, 444 U.S. 916 (1978).

Furthermore, this Court recognizes a state supreme court's inherent authority to discipline attorneys upon whom it has bestowed the privilege of being an officer of it. Goldfarb v. Virginia State Bar, Id.

In Mitan, the Supreme Court of Illinois considered Commission Rule 8.1 which provides:

> Except in extraordinary circumstances, the hearing on the complaint shall commence before the Hearing Panel no later than 90 days after service of the complaint upon the respondent. Ill. Rev. Stats. 1981, ch. 110A, following par. 771.

Mitan was served with a complaint 103 days prior to the date of his hearing.

The hearing panel dismissed the complaint without prejudice to the Commission in light of the Commission's failure to follow Rule 8.1. An identical complaint was filed two days after the dismissal. The second complaint had not been voted by an Inquiry Board panel. Mitan asked the Supreme Court of Illinois to hold that Commission Rule 8.1 amounts to a mandatory statute of limitations that bars it from imposing discipline.

The Supreme Court of Illinois held that it will not let an inadvertent administrative error be a bar to discipline. It further held that Commission Rule 8.1 must be viewed as a procedural rule of the Commission and not as a limitation on its authority and jurisdiction to discipline Illinois

attorneys.

In the instant case, the Commission made an inadvertent failure to extend a courtesy to Petitioner. If a failure to comply with a promulgated Commission rule will not deprive the Supreme Court of Illinois its right and power to consider disciplinary charges, then certainly an inadvertent failure to be courteous should not deprive the Supreme Court of Illinois from considering Petitioner's misconduct.

Assuming arguendo, that Petitioner was entitled to notice that the Inquiry Board panel voted that formal charges should be filed, then this Court should still not consider the Petition, since no prejudice resulted.

Petitioner asserts that he was

prejudiced "as evidenced by the Complaints of the Hearing Board [that he] could not produce documents for their inspection" (Petition p. 21). An examination of the Hearing Board Report reveals that the Hearing Board only referred to one document that Petitioner failed to offer into evidence (Petition p. 34).

Petitioner does not inform this Court that during his hearing he indicated that he knew where the document was located. He was then granted leave to obtain it and introduce it into evidence. In addition, a witness, Mr. Lyle Weber, testified about the document's contents. Petitioner also testified about the document, over an objection that the document speaks for

itself.

After a three week continuance, Petitioner asserted that he could not locate the document. However, he then testified that Weber's testimony correctly set forth the contents of the document. The pertinent testimony is reproduced in the Appendix (A-19 to A-29).

Certainly if any prejudice occurred by the Commission's failure to be courteous, it was cured at the hearing. The alleged missing document was put into evidence through oral testimony about its contents.

IV.

PETITIONER ENGAGED IN CONDUCT THAT WARRANTS DISCIPLINE.

Petitioner asserts that he is being judged by a negligence standard for

inartful draftsmanship and therefore is being disciplined for something that would not subject other attorneys to discipline (Petition p.p. 23-24). Petitioner's assertion is not correct.

> "Where there is intentional fraud, disbarment is warranted. On the other hand, an attorney's lack of care would justify imposition of a sanction less than disbarment." In re Saladino, 71 Ill. 2d 263, 276, 375 N.E. 2d 102, 107 (1978); In re Hopper, 85 Ill. 2d 318, 324, 423 N.E. 2d 900 (1981).

The Supreme Court of Illinois has the authority to discipline an attorney even for a lack of care. However, it should be noted that Petitioner is once again attempting to mislead this Court. His conduct involved more than a lack of care. He engaged in intentional misrepresentation to a court by filing a

false petition to declare an elderly man an incompetent.

V.

PETITIONER WAS NOT PREJUDICED BY AN EX POST FACTO LAW.

Petitioner asserts that he is prejudiced by an ex post fact [sic] law since the Supreme Court of Illinois is attempting to discipline him for violating the 1980 Code. As set forth above, discipline is being sought for a violation of the 1970 Code. Petitioner's assertion lacks merit and is not factually correct.

VI.

PETITIONER VIOLATED ILLINOIS PROFESSIONAL ETHICS STANDARDS.

Petitioner asserts that the test in disciplinary matters is a showing that the attorney engaged in fraudulent and intentional conduct that was the result of bad motives (Petition p. 27).

As set forth above, attorneys in Illinois may be disciplined for a lack of care. In re Saldino, 71 Ill. 2d 263, 375 N.E. 2d 102 (1978); In re Hopper, 85 Ill. 2d 318, 423 N.E. 2d 900. Petitioner's argument lacks merit and is contrary to Illinois law.

CONCLUSION

WHEREFORE, Respondent respectfully requests that the Court deny this Petition for Writ of Certiorari.

Respectfully submitted,

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BEFORE THE HEARING BOARD
OF THE
ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:	)	
	)	
JOHN A. BETTS,	)	No. 82-SH-69
	)	
Attorney-Respondent.	)	

COMPLAINT

Carl H. Rolewick, Administrator of tne Illinois Attorney Registration and Disciplinary Commission by his attorney, Daniel Drake, complains of the Respondent, John A. Betts, and alleges that Respondent was licensed to practice law in Illinois on October 22, 1975 and is still so licensed and has been guilty of conduct which tends to bring the courts and the legal profession into

disrepute and alleges:

1. On November 25, 1974 Respondent acquired rights in approximately twenty acres of real estate in LaSalle County, Illinois ("The Property") at a tax sale.

2. On November 25, 1974 Emil J. Knutson, an elderly person, a/k/a Julien Knutson, lived on the Property and owned an undivided 184/360th fee simple interest in the Property. One the same date, John B. Swanson (Emil's nephew) owned an undivided 120/360th fee simple interest in the Property, Edward J. Knutson (Emil's nephew) owned an undivided 28/360th fee simple interest in the Property, and Mary E. Knutson (Emil's niece) owned an undivided 28/360th fee simple interest in the Property.

3. On April 7, 1977 Respondent

telephoned Mrs. Carol Swanson Mitchell (Emil's niece) and inquired as to the whereabouts of the following relatives of Emil J. Knutson:

Miss Hazel Knutson (niece)
Miss Mary Knutson (niece--see par. 2 above)
Mr. Edward Knutson (nephew--see par. 2 above)
Mrs. Lois Burman (niece)
Mrs. Iceil Larson (niece)
Mr. John Swanson (nephew--see par. 2 above)
Mr. Fred Swanson (nephew)

During the call, Respondent informed Mrs. Mitchell that he was interested in purchasing the Property. Respondent made similar phone calls to Mrs. Mitchell on March 19, 1978 and on March 26, 1978.

4. On March 27, 1978 Land Trust Agreement Number 1484 ("the Land Trust") was entered into between the First National Bank of Ottawa, as Trustee, and Respondent, as Beneficiary. The Land

Trust stated that the Trustee was to take legal and equitable title to the Property. The Land Trust provided that Respondent and his sucessor in interest shall be entitled to the earnings, avails and proceeds of the Property. The Land Trust also gave Respondent the power to direct the Trustee to make deeds for, or mortgages, or trust deeds (which included a waiver of the right of redemption from sale under an order or decree of foreclosure) or execute leases or otherwise deal with the title to the Property.

5. On March 29, 1978 Respondent on behalf of, or together with his client, Lyle P. Weber, purchased Emil J. Knutson's interest in the Property for $10,000.00 by a quit claim deed. The

deed listed Emil J. Knutson as grantor, Lyle P. Weber as grantee, and was prepared by Respondent. On March 29, 1978 the Property had a fair market value of $29,000.00.

6. In order to induce Emil J. Knutson to convey his interest in the Property, Respondent advised Knutson that the Property was only worth $10,000.00 and that Knutson would lose his interest in the Property in the near future for failure to pay property taxes. Respondent further advised Knutson that he could remain on the Property for life, and Respondent inserted a clause in the deed allowing Knutson the right to use a portion of the Property for his lifetime or until he abandoned the premises.

7. On March 29, 1978 Lyle P. Weber

executed a Warranty Deed in Trust ("the Deed") that was prepared and notarized by the Respondent. The Deed conveyed the Property from Weber to the First National Bank of Ottawa, as trustee under the Land Trust.

8. On April 3, 1978 Weber redeemed the 1974 property taxes for the Property by a check delivered to the County Clerk by Ms. Cheryl Mettile, Respondent's secretary.

9. On May 2, 1978 a Preliminary Subdivision Plat was filed with LaSalle County for the Property by Respondent.

10. On June 13, 1978 the 1975 property taxes for the Property were redeemed by Respondent through his secretary.

11. On June 20, 1978 Respondent

transferred the rights he acquired in the Property at the March 25, 1974 tax sale to the Land Trust.

12. On September 12, 1978 Respondent signed the receipt for the Final Subdivision Plat as attorney for the Trustee of the Land Trust. At all relevent times, Respondent was not the attorney for the Trustee.

13. On October 2, 1978 Respondent brought Terrance Love, M.D., to the Property for the purpose of inspecting Knutson's living conditions. Knutson was not informed of Dr. Love's occupation. Dr. Love did not perform a medical examination of Knutson on October 2, 1978.

14. On October 6, 1978 Respondent filed a verified petition for

conservatorship of Knutson pursuant to the Probate Act in the Circuit Court of LaSalle County. Respondent, the Petitioner, was represented by Attorney John Hardin III in the conservatorship proceeding. The Petitioner alleged that Emil Knutson was incompetent. The petition further alleged:

a. "That to the best of the Petitioner's knowledge there are no living relatives of the alleged incompetent in the State of Illinois."

b. "To the best of Petitioner's knowledge, the incompetent owns no real estate in LaSalle County or Illinois."

Respondent also prepared and filed with the Circuit Court an affidavit of Dr. Terrance Love that stated the alleged incompetent had been examined by Dr. Love on October 2, 1978.

15. On October 11, 1978 a hearing was held in the Circuit Court of LaSalle

County on the Respondent's petition. Attorney Stephen West was appointed guardian ad litem for Knutson. On the same date, Respondent filed with and presented to the Circuit Court a report of a hearing concerning Knutson which was held before the Health Board of Manilus Township on October 6, 1978. The report indicated that Respondent, as attorney for the First National Bank of Ottawa, had filed with the Health Board a complaint against Knutson.

16. On October 11, 1978 the Circuit Court of LaSalle County declared Knutson incompetent. Attorney Hardin was appointed conservator at the request of Respondent.

17. On October 11, 1978 Hardin filed an oath and a petition for writ of

assistance directing the removal of Knutson from the Property to a sheltered care home in Streator, Illinois. The writ was granted and Knutson was removed from the Property on the same day. On October 12, 1978 Knutson's house was destroyed by fire. The cause of the fire was unknown.

18. On October 16, 1978, Attorney West filed a petition in the Circuit Court of LaSalle County to remove the conservator. The petition alleged that the incompetency proceeding was fraudulent and the result of questionable conduct. On October 19, 1978 Hardin requested and was granted leave to resign as conservator.

19. On December 1, 1978 a hearing was held on the petition to vacate the

adjudication of incompetency. Dr. Love testified that he had first seen his affidavit when Respondent presented it to him one or two days after observing Knutson. The Circuit Court vacated the order of incompetency and found that the allegations and conclusions of the complaint were misleading and not substantiated by fact.

20. Subsequent to the Circuit Court's vacating the adjudication of incompetency, Knutson filed a petition for expenses and attorney's fees pursuant to Section 41 of the Civil Practice Act. A trial was held on this petition on April 6, 1979. On that date the trial court found in part:

> "That the allegations in the Petition for Conservatorship relating to the Petitioner's [the Respondent herein] knowledge of living relatives, the

> alleged incompetent's interest in real estate and the general incompetency of the alleged incompetent were untrue and were made without reasonable cause."

The Circuit Court then found in favor of Knutson against Respondent and awarded him $2,058.75 in attorney's fees and $421.55 in costs.

21. Respondent appealed the Circuit Court's ruling to the Appellate Court of Illinois, Third District. On May 5, 1980 the Appellate Court entered its judgment affirming the trial court's judgment. On September 29, 1980 the Illinois Supreme Court denied Respondent's petition for leave to appeal the Appellate Court's decision.

22. The acts of the Respondent outlined above constitute conduct involving dishonesty, deceit and

misrepresentation in violation of Canon 1, D.R. 1-102(A)(4) of the Illinois Code of Professional Responsilbility, 1970, knowingly using false evidence in violation of Canon 7, D.R. 7-102(4), knowingly making a false statement in violation of Canon 7, D.R. 7-102(5), participation in the creation or preservation of evidence which he knew or it was obvious that it was false in violation of Canon 7, D.R. 7-102(6), giving advice to a person not represented by an attorney, when the interest of the other person is in conflict with the interest of his client in violation of Canon 7, D.R. 7-104(A)(2) and constitutes conduct which tends to defeat the administration of justice.

WHEREFORE, complainant prays that

this cause be assigned to a hearing panel of the Hearing Board, that a hearing be conducted by such panel, that the panel make findings of fact and conclusions of fact and law and a recommendation for such discipline of the Respondent as is warranted by such findings.

Carl H. Rolewick, Administrat
Illinois Attorney Registratio
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By: /S/ Daniel Drake
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SUPREME COURT OF ILLINOIS RULE 753(a):

(a) **Inquiry Boards.** There is hereby established an Inquiry Board which shall consist of not less than 21 members of the bar of Illinois. The members of the Board shall be appointed by the Commission to serve annual terms as commissioners of the court. The Commission may appoint such additional members of the Inquiry Board as it deems necessary to carry on the work of the Board.

The Inquiry Board shall inquire into and investigate matters referred to it by the Administrator. The Board may also initiate investigations on its own motion and may refer matters to the Administrator for investigation.

After investigation and consideration, the Inquiry Board shall dispose of matters before it by voting to dismiss the charge, to discontinue an investigation undertaken on its own motion or to file a complaint with the Hearing Board.

The Inquiry Board may act in panels of not less than 3 members each, as designated by

the Commission. The Commission shall also designate one of the members of each panel as Chairman thereof. The majority of a panel shall constitute a quorum and the concurrence of a majority shall be necessary to a decision. In the absence of the Chairman of a panel at a meeting, the members present shall designate one of their number as Acting Chairman. (87 Ill. 2d R. 753(a).)

SUPREME COURT OF ILLINOIS RULE 753(b):

(b) Filing a Complaint. A complaint voted by the Inquiry Board shall be prepared by the Administrator and filed with the Hearing Board. The complaint shall reasonably inform the attorney of the acts of misconduct he is alleged to have committed. (87 Ill. 2d R. 753(b).)

ILLINOIS ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION RULE 2.2:

Function and Procedure of Inquiry Panel. It is the function of the Inquiry Panel to determine whether there is sufficient evidence for the filing of a complaint with the Hearing Board. The Panel should review the investigation made by

the Administrator and conduct or direct any additional investigation it feels appropriate. It shall have the authority to require the attendance of witnesses before the Panel, or designated member or members thereof, and subpoenas for this purpose shall be issued by the clerk of the Court upon request of the Chairman of the Panel. However, it is not the function of the Inquiry Panel to determine the merits of the case, and its proceedings shall not be conducted as adversary hearings. A Panel shall not be required to hear the testimony of witnesses. The attorney whose conduct is under investigation shall not be permitted to appear before the Panel as a matter of right, but he may appear in the discretion of the Panel.

Before a complaint is voted, if the lawyer has not previously appeared before the Panel, or a member thereof, the Inquiry Panel or the Administrator shall send a notice to the lawyer advising him that a complaint may be voted. The notice shall give a brief description of the subject matter and afford the lawyer an opportunity to make an oral statement before the Inquiry Panel, or a designated

member thereof, on a date set in a notice to the lawyer. The notice shall be sent by the Administrator by regular mail, postage prepaid, addressed to the lawyer at the address shown on the Master Roll of Attorneys maintained by the Administrator, or at the last known business or residence address of the lawyer in the event he is not listed on the Master Roll.

An agenda shall be prepared in advance for each meeting of an Inquiry Panel and minutes of the meeting shall be kept, indicating the disposition of each matter on the agenda. A decision shall be made on each case as to whether a complaint should be voted, the case dismissed or the case passed for further action.

Matters before the Panel shall be disposed of promptly. In any instance where a lawyer is permitted to appear before the Panel, or a member thereof, he may be represented by counsel. No proceedings before the Panel may be continued more than once at the request of either the lawyer or his Counsel, except under extraordinary circumstances.

[TRANSCRIPT OF HEARING, P. 736, LINE 9 THROUGH PAGE 740, LINE 22. UNLESS OTHERWISE INDICATED, THE QUESTIONS WERE ASKED BY RESPONDENT'S COUNSEL AND THE ANSWERS WERE GIVEN BY PETITIONER.]

Q. And after you contacted him what did you do?

A. Well, as soon as we got the trust, then I sat down with the Webers and our agreement was arranged as to how title would be held in the trust and then the agreement between the Webers and myself as to assignment of any and all rights that I may have had, if any, in that trust to them to secure all their money and to give them control over the actions of the property.

Q. Now, was that in a written form?

A. Yes, it was.

Q. Is that what has been previously referred to as a collateral agreement?

A. Yes, it is.

Q. Will you tell us did you have a copy of that collateral agreement in your possession?

A. Yes, I did.

Q. In the past?

A. Yes.

Q. What did you do with it?

A. I gave -- all the documents that I have relating to this property have all been given to either Mr. William Martin in Chicago or the St. Paul Title & Trust Company to Mr. Vandamen from Bloomington.

Q. Now with respect to Mr. Martin, do you know whether he might have a copy of that agreement you referred to?

A. I would assume he does because

he was concerned about that also.

MR. FERRACUTI: I would ask leave of this Hearing Board for the opportunity to secure a copy of that collateral agreement so it can be offered in this proceeding.

CHAIRMAN: Is there any objection to that request, Mr. Drake?

MR. DRAKE: Well, I certainly don't think it's any surprise that we were going to be here today. There's no reason why this document was not obtained prior to today. This matter has been pending for quite some time.

MR. FERRACUTI: Well, it has been referred to and I think -- I know Mr. Costigan was interested in it and I think that we ought to have it, frankly, you know, in order to apprise this Board

of all the facts. And I don't know that -- I would have called over the noon hour except I couldn't get through to anybody and I would think I would be able to maybe even during a recess call Mr. Martin.

CHAIRMAN: You're in effect asking the hearing be continued or extended to receive this document.

MR. FERRACUTI: Giving us a reasonable period of time to get it is all I would ask. And I might be with a phone call able to get it within a day or two, if he tells me he's got it in his possession, which we strongly believe he does.

MR. DRAKE: Mr. Chairman, prior to making a ruling, what opportunity will I have as far as

questioning the authenticity of this document?

CHAIRMAN: That's a good question. I would think the ruling would be that we'll give you the time subject to Mr. Drake examining the document and raising any questions as to authenticity.

MR. COSTIGAN: I don't know how you can question the authenticity of the document unless you have the witness who's going to be testifying as to the particular document.

CHAIRMAN: Would you accept a certificate or affidavit from -- is Martin an attorney?

A. Yes, he is.

MR. DRAKE: Well, it doesn't appear as though Bill Martin had anything to do with the preparation of this

document.

MR. FERRACUTI: Well, I can ask the witness. On my information he did not have any. He's the attorney referred to earlier who represented the Webers in that case, I believe you'll recall, and that's why he had these documents in connection with that defense.

CHAIRMAN: We'll reserve ruling on that.

MR. FERRACUTI: I would like the indulgence maybe to recess to make a call and maybe I can get something more certain on it.

CHAIRMAN: We'll probably be recessing in a short while.

Q. (By Mr. Ferracuti.) Okay. Now, Mr. Betts, who prepared this collateral

agreement?

A. I prepared the agreement.

Q. And I want you to tell this Hearing Board just what was the sum and substance of that agreement?

A. Very basically the sum and substance of that agreement was that the -- any rights that I have would be assigned to the Webers as security for all of the money that they had placed in the purchase of the property and the subsequent money spent on that property and that I would be paid a third of whatever proceeds came out of that, the sale of anything out of that property.

Q. Was there anything else in that document?

MR. DRAKE: Mr. Chairman, at this point I would have to object on the

basis of the document speaks for itself.

CHAIRMAN: Well, we've had a lot of testimony regarding the document from another witness.

MR. DRAKE: I believe I made the same objection at that point.

CHAIRMAN: It will be overruled.

Q. Is there anything else?

A. Not that I can recall. It was a relatively short document.

Q. Physically what was its appearance?

A. It was a single sheet of white paper typed on my typewriter containing the signatures of I and Lyle and Robert Weber.

[TRANSCRIPT OF HEARING, P. 858, LINE 20 TO P. 860, LINE 4. UNLESS OTHERWISE INDICATED, THE QUESTIONS WERE ASKED BY PETITIONER'S COUNSEL AND THE ANSWERS WERE GIVEN BY PETITIONER.]

Q. Now, sir, the file that you turned over to St. Paul Title Insurance, I'll ask you pertaining to the Emil Knutson property, did that contain a copy of the collateral agreement that's been testified to here previously by Lyle Weber as having come into existence at or about the time of the creation of the Trust 1484?

A. Yes it did.

Q. And now, since the last hearing before this Board have you attempted to

locate a copy of that collateral agreement through Attorney Bill Martin?

A. Yes I have.

Q. And will you tell the Board what success you had in that regard, if any.

A. I've not been successful in that regard. Subsequent to the time we were here before I called Bill Martin's office and also called the Webers to have them call Bill Martin and give permission to release documents from that file, which they did, and Martin's office indicated that office was located in the basement of or that file was located in the basement of their office building. It was rather a large file and spread out, and they looked through the file and could not find the agreement. But they indicated they knew it had been in there.

MR. DRAKE: Objection, hearsay.

CHAIRMAN: Denied.

Q. Calling your attention to Robert Weber -- excuse me, calling your attention to Lyle Weber's testimony when he described what was contained in the collateral agreement on the Trust Agreement 1484, was that description substantially true and correct?

A. That's correct.